United Nations A/HRC/26/NGO/72

General Assembly

Distr.: General
5 June 2014

English only

Human Rights Council
Twenty-sixth session
Agenda item 4
Human rights situations that require the Council's attention

Written statement* submitted by Sign of Hope e.V. - Hoffnungszeichen, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[26 May 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE.14-04303 (E)
1404303

Please recycle

Legal System, Conflict and Human Rights in South Sudan

The present conflict in South Sudan has created room for gross human rights violations.
Although the current conflict can be seen as a struggle for power and control over economic resources, Sign of Hope wishes to point out that the systems of customary revenge killings and blood compensation might be one of the root causes of conflict, that need to be addressed in order to achieve peace and as a consequence, a significant reduction of grave human rights violations.

Present conflict causes human rights violations

The conflict between the Sudan People's Liberation Army (SPLA) and the Sudan People's Liberation Army in Opposition (SPLA i.O.) has undoubtedly created widespread human rights violations against non-combatants.

On 8 May 2014, the United Nations Mission in South Sudan (UNMISS) released a public report on the gross violations of human rights and serious violations of international humanitarian law that have occurred since the conflict broke out in Juba on 15 December 2013. The report, entitled "Conflict in South Sudan: A Human Rights Report", describes the widespread negative impact that the conflict has had on the human rights situation in many parts of the country. The report states that there are reasonable grounds to believe that gross violations of international human rights and humanitarian law have been committed by both parties to the conflict. Violations include extrajudicial killings, enforced disappearances, rape and other forms of sexual violence, arbitrary arrests and detention, targeted attacks against civilians, and attacks on hospitals as well as against UN facilities, the peacekeeping mission and its staff.

Additionally, Sign of Hope wishes to point out that on 7 February 2014 an outpost of its own medical facility in Nyal (southern part of Unity state) came under attack in the course of the conflict between SPLA and SPLA i.O. groups. According to local sources the clashes in the area on that day resulted in 60 deaths and the village of Panyijar being heavily damaged. The Sign of Hope Primary Health Care Unit in Kanynhial came under direct attack and was destroyed. Eight patients who were waiting for medical treatment were killed during the attack on 7 February 2014.

Revenge killings and blood compensation in the absence of statutory courts as one root cause of widespread violence

Customary Law can be understood as the manifestation of the customs, beliefs and practices of the people of South Sudan. Customary law remains a main source of law in South Sudan at present. The vast majority of criminal and civil cases are executed under customary law. Of the roughly fifty customary law systems in South Sudan only very few exist in written form. Customary law is not in itself a source of conflict. The basic intention of customary law is reconciliation and conflict resolution.

Yet, the customary law regime has been controversial in the human rights community because these systems often fall short of internationally accepted standards of human rights, particularly with respect to the protection of women and children. In that context some components enshrined in customary law need to be revised and harmonized with statutory law, international human rights and humanitarian law.

In many of South Sudan's customary laws, the death penalty can be used as revenge for murder or homicide. The family of the killed person can pardon the killer, demand compensation or the execution of the offender. When the option of blood compensation is chosen, this might encourage wealthier families and clans to practically act with impunity since they could afford to pay blood compensation in kind or cash in cases of homicide or murder. When the execution of the offender is chosen under customary law, this amounts to a revenge killing which might trigger subsequent counter-revenge killings and thus an escalation of violence. Violence then has the potential to continue indefinitely forming frequently a root of larger conflicts.

Even if there is a political will to overcome these traditional ways of conflict management, the state's legal system presently is too weak to comprehensively take over its actual tasks.

According to the United Nations Development Programme (UNDP), there is a lack of fully trained and experienced judges, lawyers, police and prison staff in South Sudan. With fewer than 200 statutory judges for eight million people and almost no legal aid, sufficient capacity in the legal system remains a serious challenge. Much of the population has little confidence in the state's institutions in the field of justice, and they have little information about the formal legal framework. They rely instead on customary mechanisms.

The widespread corruption within South Sudan (see letter of President Salva Kiir to his ministers, dated 3 May 2012) leaves the state's judiciary in a considerable negligence. The state does not allocate enough governmental funds to establish a functioning judiciary that could effectively counteract the cycles of violence created by revenge killings.

In that context the existence of revenge killings and blood compensation in combination with an insufficiently working statutory judiciary has been creating room for a remarkable escalation of violence in South Sudan. It should be one of the state's crucial tasks to end the negligence of the judiciary in term of funds and capacity so that the respect for the rule of law and the administration of justice will be strengthened and the effects of customary blood compensation and customary revenge killings will cease to be a root of conflict.

Recommendations

The Council should ask the Government of South Sudan and all opposition forces to immediately comply with the Cessation of Hostilities Agreement and immediately end attacks on civilians.

The Council should ask the Government of South Sudan and all opposition forces to cease all violations of international human rights and humanitarian law. All forces should immediately cease unlawful killings, acts of sexual violence and any other attacks on civilians, looting and destruction of public and private property, and acts that obstruct humanitarian access.

The Council should call upon the Government of South Sudan and all opposition forces to immediately cease violence against humanitarian personnel, assets and other obstructions to humanitarian assistance.

The Council should call upon the United Nations Security Council to amend the mandate of the United Nations Mission to South Sudan (UNMISS), to concentrate on the protection of civilians, monitoring and reporting on human rights, and on the facilitation of humanitarian assistance.

The Council should urge the Intergovernmental Authority on Development (IGAD) to immediately deploy and strengthen its Monitoring and Verification Mechanism and monitor and report the parties' respect for the ceasefire and for their obligations to protect civilians and to comply with international human rights and humanitarian law.

The Council should ask the international community to provide the necessary funding for emergency and long-term food and nutrition assistance to prevent a humanitarian catastrophe.

The Council should ask the Government of South Sudan to initiate independent criminal investigations into allegations of crimes committed by all parties to the conflict.

The Council should underline that the rule of law is essential for security, economic growth and the provision of social services in South Sudan. The rule of law provides mechanisms for peaceful resolutions of conflicts.

Moreover, the Council should urge the international community to cooperate with the Government of South Sudan, so that capacities in the rule of law sector can be built, including the Judiciary, Ministry of Justice, police and corrections.

Finally, the Council should emphasize the importance of a harmonization of customary law with statutory law so that customary revenge killings and customary blood compensation cease to be means of conflict management in South Sudan.